**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**

**SPECIAL CIVIL APPLICATION No. 21775 of 2005**

**For Approval and Signature:**

**HONOURABLE MR.JUSTICE K.M.MEHTA**

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1 Whether Reporters of Local Papers may be allowed to see the judgment ? YES

2 To be referred to the Reporter or not ? YES

3 Whether their Lordships wish to see the fair copy of the judgment ? NO

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ? NO

5 Whether it is to be circulated to the civil judge ? NO

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**RAJESH HIMATLAL SHETH - Petitioner(s)**
**Versus**
**STATE OF GUJARAT & 2 - Respondent(s)**

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**Appearance :**
MR. K.S. Nanavati ld. Sr. counsel with Mr. Keyur Gandhi, advocate for Petitioner(s) : 1,
MR. L.R. Pujari, AGP, for Respondents

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**CORAM : HONOURABLE MR.JUSTICE K.M.MEHTA**

**Date : 27/03/2006**

**CAV JUDGMENT**

1. The present petition has been filed by the petitioner praying for a writ of mandamus or any other

appropriate writ, order or direction for quashing and setting aside the detention order dated 18th October, 2005 passed by respondent No. 2, the Collector and District Magistrate, Patan, purportedly under Section 3 read with Section 2(h) of the Gujarat Prevention of Anti Social Activities Act, 1985 (hereinafter referred to as “PASA Act”).

2. In this petition the petitioner is seeking protection of his personal liberty guaranteed under Articles 14, 19 and 21 of the Constitution of India. The petitioner has approached at the pre-execution stage in view of the fact that the impugned detention order has been passed without authority and de hors the provisions of the PASA Act on vague, extraneous and irrelevant and non-existent grounds not germane to the facts. The respondent No. 2 had no authority to pass such an order of detention purportedly under Section 3 read with section 2(h) of the PASA Act.

3. The petition was filed by the petitioner on 24.10.2005. When the petition was placed before this Court on 26.10.2005, this Court issued notice returnable on 28th October, 2005. At that time the detention order was not challenged and the petitioner has filed petition

challenging the said pre-detention order relying on the criterion III, IV and V enumerated in the case of Additional Secretary to the Government of India and Ors. Vs. Smt. Alka Subhash Gadia reported at 1992 (Suppl.) 1 SCC 496. Thereafter, the Court adjourned the matter to 8.11.2005.

4. Thereafter, the petitioner filed Civil Application No. 11189 of 2005 before this Court on 31.10.2005 praying that the petitioner may not be arrested pursuant to the impugned detention order dated 18.10.2005. In the said Civil Application this Court passed order on 1.11.2005 where this Court stated that the respondents will not take any coercive measure against the petitioner till 8.11.2005 and the Civil Application to be heard on 8.11.2005. On 8.11.2005 the said observation that the authority will not take any coercive measure was continued and the matter was adjourned to 16.11.2005. On 16.11.2005 the learned advocate for the petitioner stated that in identical matter in the matter of Mukesh Himatlal Sheth, brother of the petitioner who also filed petition, this Court has allowed the petition on 5.11.2005 and therefore the petitioner requested that the interim relief which was granted earlier may be continued till 22.11.2005.

However, on that date, though judgement was delivered on 5.11.2005, the said judgement was not available and the learned advocate has stated that since the judgement is not available, he seeks an adjournment and he assured this Court that as soon as the judgement is available, the same will be produced before this Court. Thereafter, on 22.11.2005 learned advocate for the petitioner has produced the judgement in the aforesaid matter. Thereafter the matter was kept for 24.11.2005 and the interim relief which was granted was continued. On 29.11.2005 the matter was heard and arguments were almost completed. Thereafter, it is stated that for further arguments the matter will be heard thereafter.

5. It may be noted that the State Government has also filed affidavit-in-reply on 31.10.2005 and the matter was heard in the month of January, 2006. The learned advocate for the petitioner filed written submissions on 7.2.2006 and the learned counsel for the Government has also filed written submissions. Thereafter, again the matter was heard and now the pleading is over and the matter is decided finally.

6. I have heard Mr. K.S. Nanavati, learned sr. counsel with Mr. Keyur Gandhi for the petitioner. The

learned advocate has raised the following contentions. He submitted that the petitioner is seeking protection of his personal liberty guaranteed by Articles 14, 19 and 21 of the Constitution of India. The petitioner has approached at the pre-execution stage in view of the fact that the impugned detention order has been passed without authority and de hors the provisions of the said Act on vague, extraneous and irrelevant and non-existent grounds not germane to the facts stated hereinbelow and that respondent No. 2 had no authority to pass such an order of detention purportedly under Section 3 read with Section 2(h) of the PASA Act.

7. The learned advocate has set out the following facts. He stated that on 21.10.2005 at around 2.30 a.m., a large contingent of police force number around 15 or more forcibly entered his residence ostensibly looking for the arrest of the petitioner pursuant to the detention order purportedly passed under the provisions of the Act. However, as the petitioner was travelling the petitioner was not arrested and the said detention order could not be served - executed.

8. It is the case of the petitioner that the petitioner is the owner of properties in Patan town in

Gungadipatti area bearing R.S. No. 69 and R.S. No. 70 which are adjacent to each other. The learned advocate for the petitioner has relied on 7/12 abstract i.e. record of rights in which name of the petitioner is shown. In view of the aforesaid the lands were converted for non-agriculture use after due process of law, post permission being granted for the same by the Collector, Patan. NA permission was also granted and the land has, thereafter, converted into non-agricultural land. He has relied on the order of the Collector, Mehsana, dated 23.4.1985 by which the Collector has converted the land into non-agriculture use on certain conditions. As per the said order the lands both the survey numbers were divided into sub-plots which have been approved by the District Inspector of Land Records and the City Survey Officer.

9. The learned counsel for the petitioner submits that the petitioner constructed shops on the said land in the year 1991 after obtaining Raja Chiththi for starting construction from the Patan Nagar Palika, as on one side of R.S. No. 69 there is a public road, thus being unsuitable for residential purposes. The construction was completed in the year 1993. The petitioner submitted that as per condition No. 17 of the conditions of grant

of non-agricultural permission, necessary plans and maps of the shops on R.S. No. 69 were submitted to the authority. The Local Authority of Patan Nagar Palika sanctioned the said plans and maps and the authority granted permission by letter No. 812 and gave permission to start construction. After obtaining due permission the petitioner constructed shops as per the maps submitted by them and sanctioned by the authority. It is the case of the petitioner that the constructions has been made on petitioner's own land after leaving the marginal space between the Nagar Palika road and the construction of shops. It is the case of the petitioner that there is no slightest encroachment on the public road or any other land and the entire construction has been carried out as per the Rules and Regulations. The petitioner has relied on the Raja Chiththi issued by the Patan Nagar Palika being No. 405 under the provisions of the Gujarat Municipalities Act, namely under Section 155 dated 10.9.1993. The authority has also granted permission on certain conditions. The learned counsel for the petitioner has relied on said Raja Chiththi which is produced at Annexure-C to the petition. In view of the aforesaid position, it is the case of the petitioner that from the year 1990-91, on the map and plan of the shops being produced before the City Survey Officer within the

jurisdiction of the Collector, the City Survey Officer took the measurements of the site and gave separate City Survey Number to the shops and each shop keeper has been given separate Sanad. It is the case of the petitioner that it is also within the knowledge of the Superintendent of City Survey, Patan that the shops are in existence since last 15 years. After the completion of the shops, local taxes like cess, education tax, water tax and other taxes were assessed, levied and collected by the Patan Nagarpalika since last 15 years. It is the case of the petitioner that the petitioner has not put up any further construction on the land after 1993-94. The above constructed shops have been sold and such buyers are carrying on their business like dispensary etc. One such sale Deed is annexed with the petition at Annexure-D. The Sale Deed is dated 15.2.2001 between Salvi Devendra Mohanlal and Shri Rajeshbhai Himatlal Sheth. The purchaser purchased the shop which is in ground floor B-10.

10. The petitioner thereafter submitted that the District Collector issued notice on 9.2.2005 to the petitioner as was also done to the tenants/purchases of the shops earlier, alleging breach of condition of non-agricultural use of the aforesaid lands and the

petitioner was asked to remain present personally. Accordingly, the petitioner remained present on 29.3.2005 before the (Barnisi Karkun) officer in the office of the Collector and submitted written reply. On the very same day such a reply was also submitted to the Deputy Collector.

11. It is the case of the petitioner that in the aforesaid reply the petitioner clarified that there is no breach of any of the conditions of the NA permission as the petitioner had constructed the said shops pursuant to the Raja Chiththi issued by the local authority and that too in the year 1991. It was further contended that the local authority and the City survey Officer have approved the plans of the shops and therefore there was deemed revised NA permission. After the said reply, the Deputy Collector issued separate notices to the shop owners for breach of condition and on 1.6.2005 the Resident Deputy Collector issued notices to the petitioner, his brother i.e. Mukesh Himatlal Sheth who filed Special Civil Application No. 22095 of 2005 which has been decided on 5.11.2005 since reported in 2006(1) GLH 28 and his mother for breach of condition of NA permission and asked them to remain present personally on 9.6.2005. The petitioner has annexed copy of the notice as well as his reply at

Annexure-F collectively to the petition.

12. It is the case of the petitioner that the petitioner again submitted written reply on 8.6.2005 requested to issue revised NA by regularising the construction which was made in the year 1991 assuming there was technical breach of the NA permission. The petitioner requested for such regularisation more particularly in view of the fact that one of the plot holders of R.S. No. 70 after purchase of the plot from the petitioner had got revised N.A., and the other owners had got revised N.A., for consolidated plots. The petitioner contended that no site of common plot has been given in sale and that there is still ample open land lying and thus the petitioner has not constructed any excess area than what is granted. The petitioner vide the said reply dated 8.6.2005 requested for grant of revised NA on payment of appropriate charges.

13. It is the case of the petitioner that on 1.8.2005 the Resident Deputy Collector issued notice to Methaji of the petitioner namely Jethalal Manilal in the capacity of power of attorney holder and called him to remain personally present. On receipt of the said letter he submitted letter on 3.8.2005 informing that nothing

more is required to be stated in addition to what the petitioner had earlier submitted. It is the case of the petitioner that the Resident Deputy Collector informed the son of Jethalal that his father should have come personally otherwise he would ultimately go to jail under PASA. Therefore, the petitioner was constrained to make a representation to the Chief Secretary, State of Gujarat, on 1.8.2005 inter alia requesting the authorities to intervene in the mater and in any event regularize the technical breach of the N.A. Order.

14. It is the case of the petitioner, despite the above, respondent No. 2 passed an order of detention under the provisions of the PASA Act against the petitioner due to which as mentioned earlier the police had raided the house of the petitioner at an unholy hour and disturbed the peace of the house and the members therein by threatening the members and the servants. In view of the aforesaid conduct, behaviour and the threat given by the police officials, the wife of the petitioner has made a complaint on 21.10.2005 to the Deputy Commissioner of Police, Zone-I, Mumbai.

15. It is the case of the petitioner that the petitioner came to know that search party from Gujarat

had come to arrest the petitioner pursuant to a detention order dated 18.10.2005 passed by respondent No. 2 and /or 3 under the Act against which the petitioner has filed the present petition.

16. The learned advocate for the petitioner has relied on Section 3 read with Section 2(h) and (i) of the PASA Act. Section 2(h) of the Act reads as follows:

> " (h) "property grabber" means a person who illegally takes possession of any lands not belonging to himself but belonging to Government, local authority or any other person or enters into or creates illegal tenancies or lease or licence agreements or any other agreements in respect of such lands who constructs unauthorised structures thereon for sale or hire or gives such lands to any person on rental or lease and licence basis for construction or use and occupation of unauthorised structures or who knowingly gives financial aid to any person for taking illegal possession of such lands for construction of unauthorised structures thereon or who collects or attempts to collect from any occupiers of

such lands rent, compensation or other charges by criminal intimidation or who evicts or attempts to evict any such occupiers by force without resorting to the lawful procedure or who abets in any manner the doing of any of the above mentioned things."

Section 2(i) of the PASA Act reads thus:

(i)"unauthorised structure" means any structure constructed in any area without express permission in writing of the officer or authority having jurisdiction in such area required under the Bombay Land Revenue Code, 1879 (Bom. V of 1879) and the Gujarat Town Planning and Urban Development Act, 1976 (Presi. Act 27 of 1976) and the Bombay Provincial Municipal Corporations Act, 1949) (Bom. LIX of 1949), the Gujarat Municipalities Act, 1963 (Guj. 34 of 1964) or as the case may be, the Gujarat Panchayat Act, 1961 (Guj. VI of 1962) or except in accordance with any other law for the time being in force in such area."

17. The learned counsel submitted that Section 3 read with Section 2(h) and (i) does not authorise preventive detention of a citizen for breach of the conditions of N.A. Permission. Therefore, the detention of the petitioner would be clearly violative of Articles 19 and 21 of the Constitution of India. Section 3(4) of the PASA Act provides that for the purpose of this Section, a person shall be deemed to be "acting in any manner prejudicial to the maintenance of public order" when such person is engaged in or is making preparation for engaging in any activities whether as a bootlegger or dangerous person or drug offender of immoral traffic offender or property grabber, which affect adversely or are likely to affect adversely the maintenance of public order. Therefore the the petitioner has filed the present petition at pre-execution stage.

**PRELIMINARY CONTENTIONS RAISED BY THE LEARNED A.G.P.**

18. Before the learned advocate for the petitioner submitted the present petition, Mr. L.R. Pujari, learned AGP raised a preliminary contention.

18.1. The learned AGP submitted that the order of detention is not executed and the petitioner has not

surrendered to the order passed by the authorities as such no right much less fundamental right of the petitioner is violated by the respondent authorities. The petitioner is not entitled to have the copy of the grounds of detention at the pre-detention stage. By way of filing this petition, the petitioner cannot compel the authorities to disclose the grounds of detention before the same is executed. As per the settled legal position of law laid down by the Hon'ble Supreme Court of India and reiterated time and again by the Hon'ble Apex Court as well as by this Court the petitioner is required to surrender first before challenging the order of detention which is not served upon him and not executed by the authority and therefore, the present petition filed by the petitioner invoking the extraordinary jurisdiction under Article 226 of the Constitution of India cannot be treated as habeas corpus petition. As per the provisions of the Constitution and the provisions of PASA Act the petitioner is entitled to have the copy of grounds of detention and the accompaniments thereto only after the order of detention is executed and he is detained. Therefore, the respondents have preliminary objection about the maintainability of the present petition.

18.1A He has also relied on the judgement of the

Hon'ble Supreme Court in the case of UNION OF INDIA AND OTHERS VS. PRASMAL RAMPURIA reported in (1998) 8 SCC 402 and also another judgement in the case of UNION OF INDIA VS. VIDYA BAGARIA reported in AIR 2004 SC 2220 as well as judgement in the case of UNION OF INDIA AND OTHERS VS. MUNEESH SUNEJA reported in AIR 2001 SC 854.

18.1B Mr. L.R. Pujari, learned AGP has relied upon paras 31 and 32 of the judgement of the Hon'ble Supreme Court in the case of Additional Secretary to the Govt. of India and others Vs. Smt. Alka Subhash Gadia and another reported in 1992 Supp. (1) SCC 496 and stated that this Court may not interfere in this behalf.

18.2 The learned AGP has also relied upon the judgment of this Court in Special Civil Application No.7721 of 2005 in a case of pre-detention, even after a complaint filed against the petitioner therein was quashed by this Court, without expressing any opinion on the merits of the case, considering the settled legal position this Court was pleased to dismiss the pre-detention petition filed by the petitioner therein.

**PETITIONER'S REPLY TO THE PRELIMINARY CONTENTION:**

19. Mr. K.S. Nanavati, learned counsel for the petitioner has stated that it is no doubt true that ordinarily the Court did not interfere with pre-detention order i.e., the order of detention which was not executed. However, he has submitted that there is no absolute bar in entertaining the petition in certain circumstances. Even State petition is pending. In support of the same, he has relied on the judgement of the Hon'ble Supreme Court in the case of Additional Secretary to the Govt. of India and others Vs. Smt. Alka Subhash Gadia and another (supra). In that case the Hon'ble Supreme Court has laid down the principle regarding pre-determination in para 30 on page 520 in which the Court has held that powers under Articles 226 and 32 are wide and are untrammelled by any external restrictions, and can reach any executive order resulting in civil or criminal consequences. However, the Courts have over the years evolved certain self-restraints for exercising these powers. They have done so in the interests of administration of justice and for better and more efficient and informed exercise of the said powers. These self imposed restraints are not confined to the review of the orders passed under detention law only. They extend to the orders passed and decisions made under all laws. It is in pursuance of this self-evolved judicial policy

and in conformity with the self-imposed internal restrictions that the Courts insist that the aggrieved person first allow the due operation and implementation of the concerned law and exhaust the remedies provided by it before approaching the High Court and this Court to invoke their discretionary extraordinary and equitable jurisdiction under Articles 226 and 32 respectively. However, in the said judgement the Hon'ble Supreme Court has held that it is not correct to say that the Courts have no power to entertain grievances against any detention order prior to its execution. The Courts have necessary power and they have used it in proper cases as has been pointed out in the said judgement, although such cases have been few and the grounds on which the Courts have interfered with them at the pre-execution stage are necessarily very limited in scope and number. The Hon'ble Supreme Court has laid down certain exceptions.

**Findings on the preliminary issues:**

20. I have considered the judgement of the Hon'ble Apex Court in the case of Alka Subhash Gadia (supra). From the said judgement it is no doubt true that the Hon'ble Apex Court has laid down that power to entertain the petition at pre-detention stage is a limited

jurisdiction. However, from that it is not correct that the Courts have no power to entertain the grievance in a detention order prior to its execution and the Courts have laid down or jurisdiction the principle in which the petition can be entertained. In view of this , the judgement of the Hon'ble Supreme Court in the case of Alka Subhash Gadia (supra) which has been followed by several other judgements of the Hon'ble Supreme Court, in my view, the contention raised by the learned AGP regarding maintainability of the petition at pre-execution stage is rejected. In view of the same, the present petition challenging the order of detention which has not been executed is still maintainable at law.

**SUBMISSIONS ON MERITS OF THE CASE:**

21. The learned counsel for the petitioner submitted that even in the pre-execution stage also the present petition is maintainable and the said order of detention is illegal, based on vague, extraneous , non-existent and irrelevant grounds and passed without application of mind to the true facts and circumstances and therefore is liable to be quashed and set aside as it falls squarely within the exceptions as carved out in by

the Hon'ble Supreme Court in the case of Additional Secretary, Government of India Vs. Alka Subhash Gadia reported in 1992 Suppl. (1) SCC 496. In that case the Hon'ble Apex Court has laid down the principle regarding pre-detention in para 30 on page 520 which reads as under: (second line from bottom)

> “xxxxxxxxxxxxxxxxxxxxxx Thirdly, and this is more important, it is not correct to say that the courts have no power to entertain grievances against any detention order prior to its execution. The courts have the necessary power and they have used it in proper cases as has been pointed out above, although such cases have been few and the grounds on which the Courts have interfered with them at the pre-execution stage are necessarily very limited in scope and number, viz., where the courts are prima facie satisfied (i) that the impugned order is not passed under the Act under which it is purported to have been passed, (ii) that it is sought to be executed against a wrong person, (iii) that it is passed for a wrong purpose, (iv) that it is passed on vague, extraneous and irrelevant grounds or (v) that

the authority which passed it had no authority to do so. The refusal by the courts to use their extraordinary powers of judicial review to interfere with the detention orders prior to their execution on any other ground does not amount to the abandonment of the said power or to their denial to the proposed detenu, but prevents their abuse and the perversion of the law in question.”

21.2 After relying on the aforesaid decision (para 30 on page 520) , the learned counsel for the petitioner submitted that the petitioner cannot be said to be a “property grabber” inasmuch as the allegation even if taken on the face of it, also makes it abundantly clear that the petitioner is not a property grabber as so defined by the provisions of the PASA Act which has been interpreted by this Court. The learned counsel has submitted that the detention order dated 18.10.2005 is purportedly passed for constructing shops on the petitioner's own land in the year 1991 pursuant to NA permission and Raja Chiththi issued by the competent authority in the year 1985. The petitioner submitted that it appears that respondent No. 2 has invoked the powers conferred upon him under Section 3 read with

Section 2(h) of the PASA Act on the ground that the petitioner had constructed shops in residential area whereas the case of the petitioner is that he has constructed shops on his own land with the due permission of the competent authority. In any event as stated hereinabove powers under Section 3 can be invoked only if the concerned officer is satisfied that the person against whom such powers are invoked is a "property grabber" as so defined. Even according to respondent No. 2, the petitioner has not put up any structure on the Government land of a local authority or of any other person and therefore the reason for invoking the said power is vague, extraneous and on irrelevant ground and that respondent No. 2 had no authority to pass such an order.

22. It is the case of the petitioner that the petitioner's case directly falls into the exceptions carved out by the Hon'ble Supreme Court in the case of Additional Secretary, Government of India Vs. Alka Subhash Gadia (supra) and also in the matter of Union of India Vs. Amritlal reported in (2004) 3 SCC 75 for interfering at the pre-execution stage.

23. The learned counsel for the petitioner has

submitted that there is a gross delay in passing the order of detention inasmuch as the construction of the shops was made in the year 1991 over the land belonging to the petitioner after taking necessary approvals from the local authorities.

24. It was further submitted that the impugned order of detention is passed only for the alleged technical breach committed by the petitioner by constructing shops in residential area since the petitioner or his family are not engaged in any other activity in Patan which might be causing or may likely to prejudice to the maintenance of public order and in any event are not residing in Patan. Therefore the apprehension on the part of the authorities of the petitioner acting or likely to act in any manner prejudicial to the maintenance of the public order is not sustainable and therefore on this ground too the order of detention is liable to be quashed and set aside.

25. In any event, the brother of the petitioner was also involved under the same false allegation of being a property grabber and was facing a similar situation. The petitioner's brother had also filed a petition in this Court being Special Civil Application No. 22095 of 2005

which this Court has allowed and held that the petitioner therein was not a property grabber as has been alleged. The said judgement is reported in 2006(1) GLH 28 (Mukesh Himatlal Sheth Vs. State of Gujarat). In that case this Court (Corm: H.N. Devani, J) in a very well considered judgement after relying on several authorities of the Hon'ble Supreme Court of India has observed in para 19 on page 45 as under:-

> “(para 19)- Considering the proposition laid down by the Supreme Court in the aforesaid decision, the petitioner does not appear to fall within the ambit of “property grabber” as defined under Section 2(h) of the Act. The petitioner and Rajesh Himatlal Sheth (petitioner in the present petition) are admittedly the original owners of the lands in relation to which illegal activities having been committed are alleged. Placing reliance upon a resolution of the State Government, (a copy of which has not been supplied to the petitioner), it is the contention of the respondents that lands forming part of the common plot and internal road in the N.A. Permission lay out plan cease to be the

property of the original land owner. However, upon perusal of the statements and objects of the Act, as reproduced in the aforesaid decision, it is clear that a mere breach of N.A. Permission cannot be said to be an activity falling within the definition of "property grabber" under Section 2(h) of the act. The activity contemplated under the Act in relation to property grabbing is taking illegal possession of public or private lands by musclemen of some means and construction of unauthorised structures thereon or selling, leasing or giving on lease and license such land or unauthorized structure after collecting heavy price, rents, compensation etc., and resorting to criminal intimidation in so collecting the charge from the occupiers by the musclemen. It is such activities, which have the entire community living in the slums under the grip of perpetual fear of such land grabbers that can be said to be activities, which adversely affect the public order. In the present case, the lands in relation to which objectionable activities are alleged are admittedly of the ownership of the petitioner.

> Moreover, none of the objectionable activities alleged against the petitioner are in the nature of criminal intimidation or similar thereto, which have the effect of creating fear in the minds of the people residing in the locality or the public at large. Hence , it cannot be said that the petitioner has illegally taken possession of lands not belonging to himself, but belonging to government, local authority or any other person and as such, cannot be said to fall within the ambit of "property grabber" as defined under Section 2(h) of the Act. Hence, on this ground alone the detention order must fail."

25.1 In paragraph Nos. 20, 21, 22, 23 and 24 of the said judgement, the Court has further observed as under:

> "(para 20) - Under sub-section (4) of Section 3 of the Act, a person can be said to be acting a manner prejudicial to the maintenance of public order when such person is (1) engaged in or (2) is making preparation for engaging in any activities enumerated therein, (in the present case, "property grabber") which affect

adversely or are likely to affect adversely the maintenance of public order. In the present case, the aforesaid requirements are not fulfilled in that the respondents have failed to show that the petitioner is engaged in or is making preparation for engaging in the activity of property grabbing. The allegation against the petitioner is that he has constructed upon land shown as common plot and road in the layout plan, which was completed in the year 1993. The Raja Chiththi (building permission) was obtained in 1991 for shops etc., and for compound wall in the year 1998. The sale deeds upon which reliance has been placed for making the impugned detention order have been executed in the year 2000. There is nothing on record to show that on the date of making of the order of detention the petitioner was either engaged in or making preparations for engaging in any of the alleged illegal activities. Hence on this ground also the order of detention must fail.

(Para 21) - Moreover, the activities referred to in the order of detention apart from the fact that the same relate to lands owned by the

petitioner and his brother, are in point of time much prior to the making of the detention order. None of the incidents referred to in the order of detention can be said to be proximate to the date of order of detention. Neither in the detention order nor in the affidavit-in-reply filed by the detaining authority is any explanation coming forth as regards the delay in making the detention order with a view to show that there is proximity between the prejudicial activity and the order of detention. The detention order must, therefore, fail on this ground also.

(Para 22 )- Upon a perusal of the operative part of the detention order, it is apparent that the said order has been made with a view to prevent the petitioner from engaging in activities contrary to the provisions of law in relation to several other lands held by him. The basic requirement of the provisions that a person should take illegal possession of the land belonging to the Government, local authority or any other person; whereas in the present case, the apprehension voiced by the

detaining authority is in relation to the lands held by the petitioner himself. It is, therefore, beyond comprehension as to how any activity likely to be carried on by the petitioner in relation to his own lands would fall within the ambit of “property grabber” as defined under section 2(h) of the Act, leave alone call for such drastic action of detention under the provisions of the Act. Moreover, it is stated that the petitioner is likely to indulge in activities contrary to the land laws and land development laws. It is difficult to comprehend as to how the apprehended activities can be said to in any manner have the reach and potentiality to disturb the even tempo or normal life of the community so as to be prejudicial to the maintenance of public order. The Supreme Court in the case of MAGAN GOPE Vs. STATE OF WEST BENGAL, 1975(1) SCC 415, has held that where the order ex facie is made with a view to prevent an act prejudicial to the maintenance of public order, the detaining authority cannot be permitted to show that in fact the order was made to prevent an act prejudicial to the maintenance of supplies and

services essential to the life of the community. Applying the said principle to the facts of the present case, when the order of detention has been made with a view to prevent activities prejudicial to the maintenance of public order, the detaining authority cannot be permitted to show that in fact the order was made to prevent the petitioner from acting contrary to land development laws, in relation to his own land which did not fall within the ambit of “property grabber” as defined under Section 2(h) of the Act.

(Para 23) - As can be seen, the grounds of detention narrated hereinabove pertain to commission of breach of the N.A. Permission granted by the Collector in respect of lands owned by the petitioner. In fact from the number assigned to the order of detention also, it appears that the same relates to breach of condition of N.A. Permission. The aforesaid alleged activities cannot be said to have any rational nexus relatable to the maintenance of public order. Hence, the detention order must fail on this count also.

(Para 24 ) - In the present case, there is nothing in the impugned order of detention to show that the petitioner is engaged in or is preparing to engage in any activities, which affect or are likely to affect adversely the maintenance of public order. The alleged breaches of N.A. Permission are in relation to lands owned by the petitioner and none of the alleged breaches can be said to have any rational nexus with the maintenance of public order. The said activities have no casual or proximate connection with the satisfaction arrived at by the detaining authority. From the activities stated in the order of detention it is apparent that most of the said activities pertain to the under valuation of land in the sale deeds, construction on the margin land, loss to the State Government which are not germane to the object for which the order of detention can legally be made, namely, the maintenance of public order. In the circumstances, the satisfaction recorded by the detaining authority is vitiated on the grounds of non-application of mind and non-

consideration of relevant facts, vitiating the exercise of jurisdiction to detain the petitioner. On this ground also the order of detention stands vitiated."

26. After referring to the said judgement the learned counsel for the petitioner has submitted that this Court has held that the petitioner in the aforesaid petition is not a property grabber and the petitioner is admittedly the original owner of the land in relation to which illegal activities are alleged to have been committed but since none of the objectionable activities that have been alleged against the petitioner therein are in the nature of criminal intimidation or similar thereto which have the effect of creating fear in the minds of the people residing in the locality or the public at large and thus it cannot be said that the petitioner has illegally taken possession of the lands not belonging to himself but belonging to the Government, local authority or any other person and as such cannot be said to be a property grabber as defined under Section 2(h) of the PASA Act.

27. Mr. L.R. Pujari, learned AGP, has relied on the affidavit of one J.D. Bhad, District Magistrate dated

31.10.2005.

28. As regards the merit of the matter, without producing the order of detention it was stated that the authority has subjective satisfaction that the petitioner is a property grabber as defined under Section 3(4) read with Section 2(h) (i) of the PASA Act. The term property grabber came up for consideration before the Hon'ble Supreme Court in the case of H.A. GROVER VS. STATE reported in 1999(3) GLR 2516. In this case the detention order was not served on the petitioner. However, he submitted that the order of detention is passed by the authority by exercising the power conferred on the authority under PASA Act on specific relevant grounds which are existed at the time of passing the order and the same are germane to the facts and circumstances of the case . It was also denied that the purported detention order suffers from the mala fide in law as well as in fact and is passed in colourable exercise of power with a view to harass the petitioner in view of representation addressed by the petitioner to the Chief Secretary. It was further submitted that the contentions raised by the petitioner are not true . A number of irregularities and illegalities have been committed by the petitioner and it is clear from the petition that the

petitioner is a land grabber as defined under the provisions of the Act and therefore the order of detention is passed on its own merits after considering all the relevant materials placed before the authorities. He stated that the order of detention is legal and valid.

28A It was further submitted that as the petitioner has made unauthorised construction knowing very well that no such construction can be made contrary to the provisions of the Bombay Land Revenue , Gujarat Town Planning and Urban Development Act, Bombay Provincial Municipal Corporation Act, Gujarat Panchayat Act and other relevant laws whichever is applicable to the case and also without obtaining previous permission of the competent authorities and in contravention of terms and conditions of such permission and the plans sanctioned by the authorities on marginal lands, public roads and marginal lands of open space as well as common plot knowing well that such land becomes the common property of plot holders and unit holders of such constructed properties. According to the Government, neither the original land owner nor any individual will have any personal or individual right, title or interest on such land. No such construction to be made on such land contrary to the provisions of the relevant laws. In spite

of that, petitioner in collusion with others made such unauthorised and illegal constructions on those lands, which are not belonging to him. If any legal action is taken against the persons who are in possession of such unauthorised construction by removing the same, it would have resulted in breach of public order in that area.

**CONCLUSION AND FINDINGS:**

29. The learned counsel for the petitioner on merits of the matter clearly demonstrates that the authority has tried to clearly abuse the process of law, and if at this stage, if the authority is allowed to execute the order, the petitioner will have to go in jail and thereafter challenging the same and after the order is set aside the petitioner will be set at liberty but the effect is that the petitioner will have to go in jail. This attitude of the State Government is clearly an abuse of discretionary powers conferred under law and contrary to and inconsistent with the provisions of the Constitution of India particularly Article 21 which provides “Right to Life” which has been greatly expounded by the Hon'ble Supreme Court of India. In view of the same, the contention of the learned AGP that this Court may not hear the petition at this stage is devoid

of any merits and the same is required to be rejected.

30.1 From the record it appears that the petitioner is the owner of the properties in Patan Town in Gungadipatti area bearing R.S. No. 69 and R.S. No. 70 which are adjacent to each other . The said lands were converted for non-agriculture after due process of law. The petitioner has obtained permission from the Collector, Patan also. The lands of both survey numbers were divided into sub-plots as approved by the District Inspector of Land Records and the City Survey Officer.

30.2 Thereafter, the petitioner had constructed shops on the said land in the year 1991 after obtaining Raja Chiththi for starting construction from the Patan Nagar Palika as on one side of RS 69 there is public road and thus being unsuitable for residential purposes. The construction was completed in the year 1993. As per condition No. 17 of the conditions of grant of non-agricultural permission, necessary plans and maps of the shops on R.S. No. 69 were submitted to and sanctioned by the Local Authority of Patan Nagarpalika after which sanction of the plans and maps, permission letter was granted to start construction by the Nagarpalika and the said shops were constructed as per the maps sanctioned.

30.3 All these facts show that the said construction has been made by the petitioner in his own land after leaving the marginal space between the Nagarpalika road and the construction of shops. There is not slightest encroachment on the public road or any other land. In view of the documents produced by the petitioner i.e. right from 1990-91 the map and plan of shops before the City Survey Officer within the jurisdiction of the Collector, the City Survey Officer took the measurements of the site and gave separate City Survey Number to the shops and each shop-keepers has been given separate Sanad. Thus it is within the knowledge of the Superintendent of City Survey, Patan that the shops are in existence since last 15 years. After the completion of the shops, local taxes like cess, education tax, water tax and other taxes were assessed, levied and collected by the Patan Nagarpalika since last 15 years. The petitioner has not put up any further construction on the land after 1993-94. The petitioner has subsequently sold the shops and the buyers are running their business. The District Collector on 9.2.2005 issued notice to the petitioner . The petitioner filed reply. After the said reply, the Deputy Collector issued separate notices to the shop owners for breach of condition and on 1.6.2005

the Resident Deputy Collector issued notices to the petitioner, his brother and his mother for breach of condition of N.A. Permission and asked them to remain present personally on 9.6.2005. The petitioner again filed reply on 8.6.2005 and requested to issue revised N.A. Permission by regularizing the construction which was made in the year 1991 assuming there was technical breach of the N.A. Permission. The petitioner has shown that there is ample open land lying and thus the petitioner has not constructed any excess area than what is granted. On 1.8.2005 the Resident Deputy Collector issued notice to Mehtaji of the petitioner viz. Jethalal Manilal in the capacity of power of attorney holder and called him to remain personally present. On receipt of the said letter, he submitted letter on 3.8.2005 informing that nothing more is required to be stated in addition to what the petitioner had earlier submitted. The Resident Deputy Collector, thereafter, informed the son of Jethalal that his father should have come personally otherwise he would ultimately go to jail under PASA Act. Therefore, the petitioner was constrained to make a representation to the Chief Secretary, State of Gujarat on 1.8.2005 requesting the authorities to intervene in the matter. In spite of that respondent No. 2 passed an order of detention under the provisions of

the PASA Act against the petitioner due to which the police had raided his house at an unholy hour and disturbed the peace of the house and the members therein by threatening the members and the servants. In view of the same, the petitioner's wife made a complaint on 21.10.2005 to the Deputy Commissioner of Police. And therefore the present petition has been filed.

30.4 The aforesaid facts show that the petitioner is not a “property grabber” as alleged by the authority. In view of the same, the action of the authority is not bona fide and the apprehension of his arrest expressed by the petitioner is well justified. In support of the aforesaid contention, I rely on the judgement of this Court in the petitioner's own case namely MUKESH HIMATLAL SHETH VS. STATE OF GUJARAT (supra) particularly paragraph Nos. 19, 20, 21, 22, 23 and 24 which I have already referred to earlier. In my view the aforesaid judgement of the learned Single Judge completely answers the contention raised by the State Government. However, in absence of grounds which have been given that in this matter though detention order has been passed, the same has not been executed and this being pre-detention matter, I considered other aspects of the matter.

30.5 In my considered view of the facts of the case, the case of the petitioner does not fall within the definition of “property grabber” as the petitioner has not been indulged into any activity which is prejudicial to maintenance of public order as there is no allegation against the petitioner that the petitioner has taken illegal possession of public or private land by criminal intimidation with the help of musclemen or is indulging in any anti-social activity like land grabbing which is menace to even tempo of life. In view of the same, the order of detention is also bad in law.

30.5A In this connection I have referred to judgement of the Hon'ble Supreme Court in the case of Alka Subhash Gadia (supra) in para 21 of my judgement where the Hon'ble Supreme Court has carved out exceptions under which the Court, at the pre-detention stage, can exercise the jurisdiction. From the aforesaid judgement under the following grounds pre-detention order can be challenged:

(i)That the impugned order is not passed under the Act, under which it is purported to have been passed.

(ii) That it is sought to be executed against a wrong person.

(iii)That it is passed for a wrong purpose.

(iv) That it is passed on vague, extraneous and irrelevant grounds; or

(v)That the authority which passed it, had no authority to do so.

30.5B I have considered the facts of the case particularly case of the brother of the petitioner namely Mukesh Himatlal Sheth (supra) which are identical to the present case where this Court has already given judgement which I have discussed in para 25 of my judgement. I have also considered the facts of the present case. From the aforesaid discussion, in my view , the present case falls within the exception carved out by the Hon'ble Supreme Court in the case of Alka Subhash Gadia (supra), namely, the impugned is not passed under the Act under which it is purported to have been passed. In this case from the facts the authority could have resorted to ordinarly law that the petitioner has not complied with the conditions issued by the authority. Istead of that, the authority has resorted to PASA Act. It also falls within the exception (iii) that it is passed for a wrong purpose. Here according to the authority the construction of the petitioner is illegal whereas the say of the petitioner that he has made the construction after obtaining permission from the authority. Now it is merely a civil

dispute which can be resolved in a civil litigation. Therefore, reliance by the authority on drastic measure like PASA Act is based on irrelevant consideration or for a wrong purpose. In view of this also, the impugned action of the authority is liable to be quashed and set aside. Over and above this ground, there are other grounds which support the case of the petitioner which I considere hereinafter.

30.6 In this connection I rely on the judgement of the Hon'ble Supreme Court in the case of NAVALSHANKAR ISHWARLAL DAVE AND ANOTHER VS. STATE OF GUJARAT AND OTHERS reported in 1993 Supp (3) SCC 754. In the aforesaid judgement in para 4 on page 762 the Hon'ble Supreme Court has considered the definition of “property grabber” under Section 2(h) and definition of “unauthorised structure” contained in Section 2(i) of the PASA Act and after referring to the same, the Hon'ble Apex Court has observed as under:

> “Therefore, a person who illegally takes possession of any lands <u>not belonging to himself but belonging to Government,</u> local authority or any other person or enters into or creates illegal tenancies or leave and

licence agreements or any other agreement in respect of such lands or who constructs unauthorised structures thereon or enters into agreement for sale or gives on hire or gives such lands or structures to any person on rental or leave or licence basis for construction or for use and occupation of unauthorized structures or who knowingly gives financial aid to any person for taking illegal possession of such lands or for construction of unauthorised structures thereon or who collects or attempts to collect from any occupiers of such lands rent, compensation, or other charges by criminal intimidation or who evicts or attempts to evict any such occupier by force without resorting to lawful procedure or who abets in any manner the doing of any of the above mentioned acts or things is a property grabber."

30.7 The Hon'ble Apex Court has considered the objects and reasons of the PASA Act and further observed as follows:

"Para 4 of the statements and objects of the

Act furnishes clue to make the property grabbing or unauthorised construction or dealing therewith as prejudicial to the maintenance of public order thus:

`Acute shortage of housing accommodation in major cities is being exploited by certain musclemen of some means, often got from bootlegging, by taking illegal possession of public or private lands and constructing or permitting construction thereon of unauthorised structure or selling, leasing or giving on leave and licence such land or unauthorised structure after collecting heavy price, rents, compensation and the like, in so collecting the charge from the occupiers, the musclemen resort to criminal intimidation. The entire community living in the slums is under the grip of perpetual fear of such land grabbers. Such activities of these persons adversely affect the public order.”

30.8 After quoting the objects and reasons the Hon'ble Supreme Court has further observed as under:

“Therefore, taking illegal possession of

public or private lands or unauthorised construction or structures thereon or dealing with those properties or threatening or criminal intimidation of slum dwellers cause or likely to disturb even public tempo disturbing public order. To prevent dangerous person or persons indulging in anti-social activities like land grabbing or dealing with such properties is a menace to even tempo and the legislature intended to provide remedy by detention, be it by the State Government or the authorised officer on subjective satisfaction that such activity or activities adversely affect or are likely to adversely affect public order."-

30.9 I also rely on Section 2(1) of PASA Act which defines "unauthorised structure". I also rely on the judgement of this Court in the case of H.A. Grover Vs. State reported in 1999(3) GLR 2516 particularly paragraph 19 where this Court has held as under (on page 2522):

"19. Thus according to this section, a person can be said to be property grabber when -

(i) he illegally takes possession of any land

not belonging to himself, but belonging to Government, local authority or any other person,

(ii) he enters into such land or,

(iii) he enters illegal tenancy over such land or,

(iv) he creates leave and licence agreement or any other agreement in respect of such land, or

(v) he constructs unauthorized structures thereon for sale, or hire, or

(vi) gives such land to any person on rental or leave and licence basis for construction or,

(vii) gives such land for use and occupation of unauthorized structures, or

(viii) who knowingly gives financial aid to any person for taking illegal possession of such land or,

(ix) he gives such land for construction of unauthorized structures thereon, or

(x) he collects or attempts to collect from any occupier of such land, rent, compensation or other charges by criminal intimidation or

(xi) he evicts or attempts to evict any such occupier by force without resorting to

lawful procedure or

(xii) he abets in any manner the doing of any of the above mentioned things".

30.10 After that, in para 20, 21, 22, 23 and 24 this Court has considered the facts of that case and ultimately in paragraph 25 on page 2523 this Court has observed as follows:

> "In such state of affairs, there was little material before the detaining authority which could have enabled him to reach subjective satisfaction that the petitioner is a property grabber. The subjective satisfaction of the detaining authority on this point, therefore, seems to be non-existent and in any case it was imaginary subjective satisfaction of the detaining authority which cannot be upheld. Thus, if the petitioner cannot legally be called as property grabber the order of detention passed against him has to be quashed without entering into further contentions raised by the learned Counsel for the petitioner."

30.11 In view of the aforesaid decision the basic

definition of “property grabber” is that a person who is alleged to be of “property grabber” is a person who has no title to the property and has been involved in any of the activities mentioned in Section 2(h) in respect of land to which he has no title or is not the owner. The words “who constructs unauthorized structures thereon for sale or hire” in Section 2(h) also refers to these activities in respect of land to which the person alleged to be “property grabber” is not the owner and has no title. It is clear from the words of Section 2(h) which read “a person who illegally takes possession of any lands not belonging to him”.

30.12 On conjoint reading of Section 2(h)and (i) with Section 3 of the Act it appears that the subjective satisfaction arrived at by the authority for detaining a person is absent and the authority has not exercised the power in good faith and therefore the order of detention is required to be quashed and set aside and accordingly it is set aside.

31. It may be noted that the learned AGP has raised contention that even if the petitioner is able to prove his case, this Court may not grant any relief as the petitioner has come before this Court before the

detention order has been executed. On the other hand the learned counsel for the petitioner has submitted that from the facts and submissions made by the petitioner and the material which he has demonstrated in this case, it reveals that this is clearly an abuse of process of law and therefore this Court must grant complete relief to the petitioner. From the record it appears that the basic fact that the land is Government land is not established by the Government. Once that is not established, the Government cannot contend that the petitioner is a “property grabber”. It is established from the record that the petitioner is owner of the property in question and he has obtained necessary orders from the Collector and also after obtaining raja chiththi he has started construction and therefore by no stretch of imagination the petitioner can be called as “property grabber”. As the authority is not able to prove their case in the revenue proceedings, the authority now desires to make steps under the provisions of PASA Act, though, in fact, they have not been able to prove any ingredients of “property grabber” under PASA Act. It is their case that even if the authority is not able to prove their case but today the order of detention can be executed and after the petitioner be sent in jail he can challenge the said order and at that time this Court may grant final relief

after considering the grounds supplied by them. The learned counsel for the petitioner states that as this is a case of complete “abuse of process of law”, this formality could not be adhered to.

32. The contention of the learned AGP that the Government has power to act under the PASA Act and therefore this Court may not interfere with the said power which has been exercised by the Government in view of the discretionary power conferred under the Act. The learned advocate for the petitioner stated that the said argument is not available in this case because here there is a complete case of abuse of process of law as well as complete case of abuse of process of discretionary power exercised by the authority under the Act.

33. I also rely on the Division Bench judgement of this Court in the case of Laxman Popatbhai Vs. State of Gujarat reported (1976) 17 GLR 370 (Coram: J.B. Mehta and A.D. Desai, JJ) where the petitioner, a Government servant, was suspended and a prolonged enquiry against him ended in his favour. He was acquitted of all charges and as per Rule 152 of the Bombay Civil Services Rules, 1959, the State ordered the entire suspension period as duty period paying all the backwages. Even a civil suit

to recover alleged loss failed. Yet, again the Government sought to forfeit his pension on groundless allegations unsupported by any evidence. So a writ of mandamus was prayed against the State. It was contended that at the most the High Court could quash the order by directing the Government to hold fresh enquiry. This Court negativing the said contention on page 381 has observed as under:

> "To concede such a right to the State would be to permit complete abuse of power in the context of such cases and deny the guarantee of the rule of law enshrined in our Constitution to all civil servants".

Ultimately, on the same page at bottom the Division Bench observed as under:

> "We are entitled to hold that no fresh enquiry in the case shall be held against the petitioner and that the hatchet shall be buried once for all because it would be gross abuse of power to permit any such enquiry after all these infructuous proceedings when the State had ample opportunity to prove its alleged

charges and when it itself had treated the concerned Government servant as honourably acquitted and even a civil suit had failed."

34. I have considered the rival submissions and in my view this is a complete case of abuse of process of law and this Court can grant relief to the petitioner. What is "abuse of process of law" and What is "discretionary power", I crave leave to rely upon the same.

**(i) What is discretionary power:**

"Discretion in laymen's language means choosing from amongst the various available alternatives without reference to any predetermined criterion, no matter how fanciful that choice may be. xxxxxxxxxxx But the term "discretion" when qualified by the word "administrative" has somewhat different overtones. "Discretion" in this sense means choosing from amongst the various available alternatives but with reference to the rules of reason and justice and not according to personal whims. Such exercise is not to be arbitrary, vague and fanciful, but legal and regular. For Coke once said that discretion is a science or understanding to discern between falsity and truth, between right and wrong, and not to do according

to will and private affection."

(See: Administrative Law by I.P. Massey, 6th Edition, p. 55, 56)

**(ii) What is abuse of process of law**:

"Certiorari will also lie to quash an action where the authority has jurisdiction but has abused it. An authority shall be deemed to have abused its jurisdiction when it exercises its power for an improper purpose or on extraneous considerations, or in bad faith, or leaves out a relevant consideration, or does not exercise the power by itself but at the instance and discretion of someone else."

(Please see: Administrative Law by I.P. Massey, 6th Edition, p. 329)

"In France, the administrative Courts exercise power of judicial review over administrative action if the administrative authority abuses its discretionary powers. The term "abuse of power" includes everything which the term "unreasonable exercise of power" includes in the USA. From the above analysis it becomes clear that though some discretion is necessary to keep the giant

wheels of administration moving in this age of an intensive form of government, if the power is misused the arms of the Court are long enough to reach it."

(Please see: Administrative Law by I.P. Massey, 6th Edition, P. 69)

35. How the power is to be exercised and when it amounts to abuse of process of law.

> "The first requirement is the recognition that all power has legal limits. The next requirement, no less vital, is that the Courts should draw those limits in a way which strikes the most suitable balance between executive efficiency and legal protection of the citizen. Parliament constantly confers upon public authorities powers which on their face might seem absolute and arbitrary. But arbitrary power and unfettered discretion are what the Courts refuse to countenance. They have woven a network of restrictive principles which require statutory powers to be exercised reasonably and in good faith, for proper purposes only, and in accordance with the spirit as well as the letter of the empower Act. They have also, as

explained elsewhere, imposed stringent procedural requirements. Here we are concerned with the substance of administrative discretion." (See: Administrative Law, 9th Edition, by H.W.R. Wade & C.F. Forsyth – Part V Discretionary Power - Chapter 11 Abuse of Discretion on page 343)"

36. In view of this, though the Government has power to pass order, the same should be exercised within the legal limits. When the order has been passed without statutory limits, the order can be struck down.

37. For the foregoing reasons, this petition is allowed. In view of the judgement of this Court in the case of Mukesh Himatlal Sheth Vs. State (supra) and other cases which I have referred to hereinabove particularly judgements of the Hon'ble Supreme Court in the case of Alka Subhash Gadia (supra), Navalshankar Ishwarlal Dave and Another Vs. State of Gujarat and others (supra) and judgement of this Court in the case of H.A. Grover Vs. State (supra) and other principles laid down which I have discussed earlier, the purported action of the respondent authorities is liable to be quashed and set aside. The respondent authorities are restrained from executing and

implementing detention order No. 2830 of 2005 dated 18.10.2005 passed by the District Magistrate, Patan, - respondent No.2 whereby the authorities are seeking to detain the petitioner under the provisions of Gujarat Prevention of Anti-Social Activities Act, 1985 and the said impugned order namely order No. 2830 of 2005 dated 18.10.2005 is quashed and set aside. Rule is made absolute with no order as to costs. Direct service is permitted.

( K.M. Mehta, J. )

(pkn)